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6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA,	)	No. CR 07-00738 MMC
	)	
11 Plaintiff,	)	<b>DEFENDANT ARIAS-ORDONEZ'</b>
	)	<b>SUBMISSION IN SUPPORT OF</b>
12 v.	)	<b>OPPOSITION TO GOVERNMENT'S</b>
	)	<b>REQUEST FOR DETENTION PENDING</b>
13	)	<b>APPEAL</b>
	)	
14 NOE ARIAS-ORDONEZ,	)	Date: June 18, 2008
	)	Time: 2:30 p.m.
15	)	Court: Hon. Maxine M. Chesney
	)	
16 Defendant.	)	
17 _____	)	

18  
19 At the last proceeding on May 28, 2008, this Court requested the parties submit any and all  
20 documentation located regarding Mr. Arias-Ordonez' prior convictions, for the purposes of  
21 determining whether or not his prior conviction in June, 2006 under California Penal Code  
22 Section 496 qualifies as an aggravated felony for Guideline purposes under U.S.S.G. § 2L1.2. At  
23 issue is the length of Mr. Arias-Ordonez' potential sentence in this matter. Under U.S.S.G. §  
24 2L1.2.(b)(1)(C) (which cross references 8 U.S.C. § 1101(a)(43), Mr. Arias-Ordonez qualifies for  
25 an 8 level bump in his Offense Level if he has been convicted of a theft offense for which he was

1 sentenced to a term of imprisonment exceeding one year. The Court inquired as to this fact to  
2 determine the correct Guideline range that Mr. Arias-Ordonez would face down the road should  
3 the government succeed on its appeal of this Court's order dismissing the indictment.

4 The question before the parties is thus whether or not Mr. Arias-Ordonez was sentenced to  
5 more than one year. Submitted and attached to this submission as Exhibit A are the documents  
6 relating to Mr. Arias-Ordonez' court proceedings on the 496 charge. Although the documents are  
7 difficult to understand and appear to be inconclusive, it appears that Mr. Arias-Ordonez did not  
8 receive the requisite one year sentence. His Guideline range should thus be calculated at Offense  
9 Level 10 (with acceptance), Criminal History Category IV, for a resulting range of 15-21 months.

10 Mr. Arias-Ordonez' first sentence on the 496 charge, imposed on June 5, 2006, appears to  
11 undersigned counsel to be a probation sentence to a term of 36 months, with a suspended sentence  
12 imposed of 6 months less credit for time served. *See* June 5, 2006 County of Sonoma Record of  
13 Proceeding, attached hereto at Exhibit A. The boxes for "imposition of sentence suspended" as  
14 well as "36 months of probation" are both checked on this form. *Id.* On page 2 of this record,  
15 there is an indication that the defendant was sentenced to serve 6 months. *Id.* However, given the  
16 limitation on the first page of the form that the imposition of sentence was suspended,  
17 undersigned counsel reads this form as stating that the 6 month jail term was suspended. *Id.*  
18 Although defense counsel attempted to get a copy of the sentencing transcript on this matter, it  
19 was not available at the Sonoma County Clerk's Office at the time these documents were copied.  
20 When Mr. Arias-Ordonez was violated on probation in October, 2006, it then appears as if the 6  
21 months was imposed. *Id.* at Sonoma County Court Records from 10/2/2006. It thus appears to  
22 undersigned counsel that the total amount of time Mr. Arias-Ordonez was sentenced to for his  
23 conviction of CPC Section 496 is six months.  
24  
25  
26

CONCLUSION

As Mr. Arias-Ordonez does not appear to qualify for the 8 level enhancement for having been convicted of an aggravated felony, he asks this Court to release him to ICE custody while the government's appeal is pending, as his ultimate Guideline range on the underlying case, had he been convicted, would have only been 15-21 months.

Dated: June 13, 2008

Respectfully submitted,

BARRY J. PORTMAN  
Federal Public Defender

/S/

ELIZABETH M. FALK  
Assistant Federal Public Defender